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News & Information

Office of the Commissioner

Contact: Kevin Smith 609/292-7832

Notice of Proposed Regulation

**Re: Proposed Amendments: N.J.A.C. 12:235 concerning
Workers' Compensation**

Attached please find the above-referenced matter which was published in the July 1, 2002 *New Jersey Register*.

If you have any questions, please contact Frederick S. Cohen, Regulatory Officer I at 609-777-2960.

(a)

DIVISION OF WORKERS' COMPENSATION**Rules of the Division of Workers' Compensation****Proposed Amendments: N.J.A.C. 12:235-1.6, 2.1 and 14.1****Proposed New Rules: N.J.A.C. 12:235-3.15, 10, 11.2 and 11.3****Proposed Recodifications with Amendments:****N.J.A.C. 12:235-4 as 9, 5 through 8 as 3 through 6, 10 as 11, 11 as 12 and 12 as 7****Proposed Repeals: N.J.A.C. 12:235-3, 6.9 and 10.2 through 10.6**

Authorized By: Albert G. Kroll, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12(b) and (c) and 34:16-64 et seq.

Proposal Number: PRN 2002-216.

A public hearing on the proposed amendments will be held on the following date at the following location:

Tuesday, July 23, 2002
 10:00 A.M. to 12:00 Noon
 New Jersey Department of Labor
 John Fitch Plaza
 13th Floor Auditorium
 Trenton, New Jersey 08625

Please call the Office of Regulatory Services (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by August 30, 2002 to:

Frederick S. Cohen, Regulatory Officer
 Office of Regulatory Services
 New Jersey Department of Labor
 PO Box 110—13th Floor, Suite G
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The agency proposal follows:

Summary

A full review of the rules of the Division of Workers' Compensation was conducted by committees that included workers' compensation judges, practicing attorneys, insurance company representatives and others. Through the work of the committees and advice from the Attorney General's office, the present rule proposal was developed. While there are substantial revisions from the current rules in certain sections of this proposal, the majority of the Division's rules have been retained. The most significant change for groups and individuals who regularly utilize the Division's programs is the ability to file pleadings and accident reports electronically. With respect to the Division's internal operations, the development of a full code of judicial

conduct and clarification of the role and activities of the Commission on Judicial Performance present major additions to the Division's structure. Overall the rule amendments and the retention of appropriate current rules are intended to provide a clear, convenient and cost effective process for individuals who participate in the New Jersey Workers' Compensation system.

Subchapter 1 has no substantive amendments from the current rules and sets forth the purpose and general provisions of the rules.

Subchapter 2 contains the current definitions of chapter words and terms. An additional definition of the word "Department" to mean the Department of Labor, is proposed. The definition of "Office of Safety Compliance" is being deleted since that entity no longer has a role in accident reporting matters and is not otherwise mentioned in these proposed rules.

Proposed subchapter 3 now contains rules relating to formal claims including the filing of claims and answers that had been in subchapter 5. The current subchapter 3 concerning the conduct of judges has been repealed and a new subchapter on that subject proposed as subchapter 10. The major change in the proposed subchapter 3 is the ability to file claim petitions and answers electronically.

Proposed N.J.A.C. 12:235-3.1 allows for the filing of claim petitions and answers electronically or on paper. In either format, the claim petition and answer must still contain the necessary information of the current rule. Additionally, a paper copy of any electronically filed pleading must be retained by the attorney of record and this copy must include any required verification by oath, affirmation or certification as set forth in the current rules.

Proposed N.J.A.C. 12:235-3.2 contains the current procedures for filing a motion for temporary disability and/or medical benefits. The proposed amendment includes the general practice of limiting such motions to a current need for benefits. A motion would therefore not be appropriate where only past periods of temporary disability or medical expenses are at issue.

Proposed N.J.A.C. 12:235-3.9 clarifies the current rule to permit the filing of a motion to dismiss when a case has been administratively discontinued. Also, where a petitioner has failed to appear for a respondent medical examination without good cause, a judge would have the discretion to adjust counsel fees or require reimbursement to a respondent for the cost of the missed appointment.

Proposed N.J.A.C. 12:235-3.10(a) includes a new paragraph to allow a medical provider the right to intervene in a pending claim petition for payment of medical services or to assert a lien pending the outcome of the case.

Proposed N.J.A.C. 12:235-3.10(e) clarifies the current practice to require a full review of matters where there are material disputes of fact. It also sets forth the order of proofs to be followed at trial.

The deletion of the word "expert" in the proposed N.J.A.C. 12:235-3.10(f)4 will allow video conferencing of all witnesses, including fact witnesses when other conditions of the rule are met.

The amendment to the proposed N.J.A.C. 12:235-3.10(n) permits a judge, as well as a court reporter, to mark exhibits. In so doing, it codifies existing practices.

Proposed N.J.A.C. 12:235-3.14 strengthens the enforcement provision and provides a judge who finds an unreasonable failure to comply with a court order, judgment, statute or regulation additional remedies including dismissal of a claim and administrative referrals. Further, the amendment sets forth the motion procedure for enforcement actions and provides a definition of "compensatory sanction."

Proposed new N.J.A.C. 12:235-3.15 requires that requests for a stay of an order or judgment be heard on the record.

Proposed subchapter 4 contains the rules concerning informal hearings that had been contained in subchapter 6. The only amendment is the requirement in proposed N.J.A.C. 12:235-4.4(b) that a worker receive from the Division an informational brochure describing the informal hearing process with the notice of an informal hearing.

The proposed N.J.A.C. 12:235-4.8 deletes the previous N.J.A.C. 12:235-6.8(b) since only an attorney can represent an individual at an informal workers' compensation hearing and no exceptions can be granted thereto.

Proposed subchapter 5 contains the rules concerning Second Injury Fund cases that had been contained in subchapter 7. There are no substantive amendments to the procedures in this area.

The proposed amendments to N.J.A.C. 12:235-5.1(a) and (f) conform the rules to existing practice where cases which are not settled at a Second Injury Fund conference are listed as bifurcated trials in order to separate the issues. In this manner, the issue of a total disability claim is settled first. If total disability is established at the trial and the judge believes that pre-existing

disabilities may have contributed to the total disability, the case is then re-listed for a hearing. In the course of that hearing, the parties can be heard as to the allocation of the total disability between the last compensable work-related disabilities and the pre-existing disabilities.

Proposed subchapter 6 contains the rules concerning the commutation of a workers' compensation award that had been contained in subchapter 8. There are no substantive amendments to the procedures in this area.

Proposed subchapter 7 contains the rules concerning the Uninsured Employers' Fund that had been contained in subchapter 12. The only substantive amendments are contained in proposed N.J.A.C. 12:235-7.1(c) which clarifies that the Fund is a party to proceedings in this subchapter; new subsection (d) which allows the Fund to dispense with motion filing procedures when appropriate with the judge's consent; and new subsection (e) which requires notice to the Fund when there is an appeal of a case involving the Fund.

Proposed subchapter 9 contains the rules concerning discrimination complaints that had been contained in subchapter 8. There are no substantive amendments to the procedures in this area.

Proposed subchapter 10 contains the rules concerning the conduct of judges; the current rules in this subject are contained in subchapter 3, proposed herein for repeal. This subchapter has been significantly changed with the addition of a more detailed judicial code of conduct patterned after judicial branch policies and a revised discipline process.

The present regulatory Code of Conduct applicable to judges of compensation is of limited scope setting forth in broad terms the requirements pertaining to promptness, courtesy, attorney and witness conduct, restrictions on involvement in partisan political activities and conflicts of interest. While these matters are still addressed in the proposed rules, other areas are now also included which relate to the financial, legal-related and personal activities of judges of compensation. Thus, the new Code of Conduct is not an amendment of the current Code, but rather incorporates all of the subject matter referenced in the current Code in greater detail than presently exists with additional matters addressed for a clear and comprehensive Code which will ensure the maintenance of judicial integrity and trust.

Proposed N.J.A.C. 12:235-10.1 requires diligence in the performance of judicial duties; 10.2 requires courtesy and civility on the part of the judge and court personnel; 10.3 requires that attorneys appearing before the court conduct themselves in a professional manner; 10.4 requires that witnesses and others having business with the court conduct themselves in a proper manner; 10.5 requires that a judge uphold the integrity and independence of the judiciary; and 10.6 requires that a judge avoid impropriety and the appearance of impropriety in judicial and personal activities.

Proposed N.J.A.C. 12:235-10.7 sets forth matters which would disqualify a judge from hearing a case.

Proposed N.J.A.C. 12:235-10.8 allows a judge to engage in activities that improve the law, the legal system and the administration of justice.

Proposed N.J.A.C. 12:235-10.9 and 10.10 require that a judge conduct his or her personal activities such as hobbies, civic and charitable activities and financial dealings in a manner to minimize conflicts with judicial duties.

Proposed N.J.A.C. 12:235-10.11 requires that a judge refrain from political activities.

Proposed N.J.A.C. 12:235-10.12 requires that a judge report to the Director situations where a medical provider or attorney has falsified or withheld a medical report, medical findings or a medical bill.

Proposed N.J.A.C. 12:235-10.13 sets forth the causes for discipline or removal of a judge and N.J.A.C. 12:235-10.14 sets forth the forms of discipline. Discipline penalties are defined as either minor discipline in N.J.A.C. 12:235-10.15 where the decision of a supervisory judge is final or major discipline in N.J.A.C. 12:235-10.16 where a judge has a right to an independent hearing.

Proposed N.J.A.C. 12:235-10.17 establishes the Commission on Judicial Performance to investigate complaints or reports referred by the Director concerning judicial conduct and to give advisory opinions, recommendations and reports to the Director. The initial review procedures by the Commission are set forth in N.J.A.C. 12:235-10.18. The Commission's evidentiary review procedures are set forth in N.J.A.C. 12:235-10.19. The Commission would make recommendations to the Director under the procedures in N.J.A.C. 12:235-10.20.

N.J.A.C. 12:235-10.21 sets forth the independent final hearing process in major discipline actions. Where feasible and as permitted by law, a retired judge of the Superior Court would serve as hearing officer and set procedures for the hearing. A final decision in a removal case would be by the Governor. The Commissioner would set the penalty in other major discipline cases.

Proposed subchapter 11 contains the procedures for filing accident reports that had been contained in subchapter 10. The major amendment is the electronic filing of reports rather than the paper filing under current rules as required by P.L. 2001, c.236.

Proposed subchapter 11 includes the repeal of the current N.J.A.C. 12:235-10.2, 10.3, 10.4, 10.5 and 10.6 since the procedures and processes contained therein have been eliminated by P.L. 2001, c.236. The proposed rules also reflect the streamlined accident reporting required under the latter statute.

Proposed N.J.A.C. 12:235-11.1 sets forth the procedures for electronically filing the first notice of accident. Proposed new N.J.A.C. 12:235-11.2 provides the requirements to file the final notice of accident. Information on the final notice must be provided to the injured worker. A penalty consistent with the provision is provided for in proposed new N.J.A.C. 12:235-11.3.

Proposed subchapter 12 contains procedures for surcharge collection that were contained in subchapter 11. Except for an updated address in proposed N.J.A.C. 12:235-12.8, there are no amendments to the procedures in this area.

Subchapter 13 contains the procedures for the enforcement and collection of non-insurance penalties. There are no amendments to the procedures in this area.

Proposed subchapter 14 contains a listing of the Division's standard forms. Current forms concerning the filing of accident reports have been deleted since the electronic filing process does not utilize these forms, and a reference to the Informational Brochure on Informal Proceedings added.

Social Impact

The proposed amendments, repeals and new rules set forth the framework for the workers' compensation system in New Jersey. Members of the workers' compensation bar and bench have had input in the development of the rules which maintain much of the current rules. The new provisions on trial procedures and motions generally codify existing practices.

With technological advances, the Division is able to improve the cost effectiveness and efficiency of certain areas of the workers' compensation practice. The amended rules specifically provide for the electronic filing of answers and claim petitions. This change will have a positive social impact in expediting the pleading stage of workers' compensation cases. Employers and carriers, who must file accident reports, should save mailing and paper processing costs with the electronic filing of accident reports.

The code of judicial conduct contained in proposed subchapter 10 will further enhance the Division's reputation and policies for a competent and responsive judiciary. This subchapter also provides extensive guidance to the judges on appropriate activities and conduct.

The workers' compensation program in New Jersey will clearly benefit from the rule proposal that provides for a clear and consistent application of the Division's statutory mandates.

Economic Impact

The proposed amendments, repeals and new rules do not add costs to the workers' compensation judiciary functions while providing a full process for the handling of workers' compensation cases. In developing the rule proposal, extensive discussions were held with the workers' compensation judges, the workers' compensation attorneys and insurance company representatives. The interests of all parties were considered in developing a system that is cost and time effective to all interested groups. It is also clear that the parties that utilize the electronic filing of claim petitions and answers should save postage, office expenses and other costs.

It is not anticipated that the enhanced Code of Conduct will have an economic impact on judges of compensation since they are currently restricted from outside employment by the Department's approval process under the departmental Code of Ethics. All aspects of the proposed Code of Conduct have been reviewed by the judges of compensation and no detrimental economic impact was reported by them.

The filing of accident reports in electronic format could also present a cost benefit to employers and carriers who have to currently prepare and file paper reports. While there may be some initial training, internet access and equipment expenses to establish the electronic filing program, the overall effect should be a faster and less expensive process to meet the statutory requirement of accident filings.

Federal Standards Statement

The Federal standards analysis is not required because the proposed amendments, repeals and new rules are not subject to any Federal requirements or standards.

PROPOSALS

Jobs Impact

The proposed amendments, repeals and new rules will have no impact on jobs, including the generation or loss of jobs, since they enhance existing programs. To the extent there will be business savings through electronic filings, employers may have additional resources for expansion of business and employment.

Agriculture Industry Impact

The proposed amendments, repeals and new rules will have no impact on the agriculture industry other than the generalized savings all employers could receive through electronic filing procedures.

Regulatory Flexibility Analysis

The proposed amendments, repeals and new rules affect all businesses in New Jersey that are covered by the workers' compensation system, including small businesses as defined under the Regulatory Flexibility Act, N.J.S.A 52:14B-16 et seq. There should be no adverse impact on small business and cost savings should be realized through electronic filing procedures.

The proposed rules on procedures generally reflect current practices that are being codified. Any costs associated with these proposed amendments, repeals and new rules would be the minimal and ordinary costs of doing business. The electronic filing of claim petitions and the answers thereto are not mandatory, but filing and answering in that modality is expected to save both time and money for those petitioners and respondents who utilize same. However, it is mandated by P.L. 2001, c.236 that accident reports be filed electronically. These proposed amendments and new rules reflect that requirement. As noted, doing so should be both cost and time efficient. No professional services need be employed in order to comply. Moreover, with the exception of large employers and public entities which are self-insured, all other businesses in this State are required to have workers' compensation insurance coverage. In most instances, the insurance carriers would provide for the electronic filing of the accident report and the expense of setting up the filing system would be an initial financial outlay by the insurance carrier which will likely be recouped over time by lower operating costs which flow from the electronic filing process. There is no different compliance requirements based on business size. The proposed amendments and new rules do not establish any impediments to the function and costs associated with the workers' compensation system.

Smart Growth Impact

The proposed amendments, repeals and new rules will not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 12:235-3, 6.9 and 10.2 through 10.6.